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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE

BY: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAZARO GUTIERREZ,  
Plaintiff,

vs.

JOSE GUADALUPE  
MARTINEZ,  
Defendants.

Case No. SACV 14-1638-UA (DUTYx)

ORDER SUMMARILY REMANDING  
IMPROPERLY-REMOVED ACTION

Jonathan Gonzalez ("Applicant") lodged a pro se Notice of Removal of State Court Action ("Notice of Removal") herein on October 8, 2014. Applicant also filed a request to proceed without prepayment of full filing fee ("IFP Request") on October 8, 2014.

After careful review and consideration of the allegations of the Notice of Removal, and pursuant to 28 U.S.C. Section 1915, the Court finds that the Applicant's allegations are frivolous and are not sufficient to state any claim as presently plead in the Notice of Removal.

The Court has screened the Notice of Removal prior to ordering service for purposes of determining whether the action is frivolous or malicious; or fails to state

1 a claim on which relief may be granted; or seeks monetary relief against a party who  
2 is immune from such relief.

3 In addition, the Court's screening of the Notice of Removal is governed by the  
4 following standards. A complaint may be dismissed as a matter of law for failure to  
5 state a claim for two reasons: (1) Lack of a cognizable legal theory; or (2)  
6 insufficient facts under a cognizable legal theory. See Balistreri v. Pacifica Police  
7 Dep't, 901 F.2d 696, 699 (9th Cir. 1990). Since the Applicant is appearing pro se, the  
8 Court must construe the allegations of the Notice of Removal liberally and must  
9 afford plaintiff the benefit of any doubt. See Karim-Panahi v. Los Angeles Police  
10 Dep't, 839 F.2d 621, 623 (9th Cir. 1988). Moreover, in determining whether the  
11 Notice of Removal states a claim on which relief may be granted, the Court must take  
12 its allegations of material fact as true and must construe them in the light most  
13 favorable to plaintiff. See Love v. United States, 915 F.2d 1242, 1245 (9th Cir.  
14 1989). However, as the Supreme Court has held: "a [party's] obligation to provide  
15 the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions,  
16 and a formulaic recitation of the elements of a cause of action will not do. . . . Factual  
17 allegations must be enough to raise a right to relief above the speculative level." Bell  
18 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929  
19 (2007) (internal citations omitted).

20 As the Supreme Court has explained, to conform with the pleading  
21 requirements of Fed. R. Civ. P. 8, "a complaint must contain sufficient factual matter,  
22 accepted as true, to 'state a claim to relief that is plausible on its face'" (Ashcroft v.  
23 Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), quoting  
24 Twombly 550 U.S. at 570), and "threadbare recitals of the elements of a cause of  
25 action, supported by mere conclusory statements, do not suffice." (Id., citing  
26 Twombly, 550 U.S. at 555). In elaborating on the requirements of Rule 8 that a  
27 complaint must state sufficient facts to support a plausible (rather than a merely  
28 possible) cause of action, the Iqbal Court stated that "[W]here the well-pleaded facts

1 do not permit the court to infer more than the mere possibility of misconduct, the  
2 complaint has alleged - but it has not 'show[n]' - 'that the pleader is entitled to relief'"  
3 (Iqbal, 556 U.S. at 678, citing to Fed. R. Civ. P. 8(a)(2).)

4 Here, the underlying state action is a straight-forward unlawful detainer action,  
5 and therefore does not present a federal question. Even assuming that the defendant  
6 in that action intended to assert a federal defense to the state law claim, such action  
7 does not convert it to "arising under" federal law for purposes of federal question  
8 jurisdiction (see More-Thomas v. Alaska Airlines, Inc., 553 F.3d 1244 (9th Cir.  
9 2009)). The Court notes that Applicant does not allege the amount in controversy in  
10 the Notice of Removal, however, the plaintiff in the unlawful detainer seeks damages  
11 which do not exceed \$10,000 (see Complaint, caption). The Complaint seeks  
12 damages of \$60.00 per day from August 1, 2014, to the date of entry of judgment.  
13 (Complaint at ¶¶ 11, 17.) Moreover, the Applicant has not alleged complete diversity,  
14 as required by 28 U.S.C. § 1332.

15 The Court further notes that the Applicant is not named as a defendant (or in  
16 any capacity) in the underlying unlawful detainer action he seeks to remove.  
17 Pursuant to 28 U.S.C. § 1446(a) "[a] defendant or defendants desiring to remove any  
18 civil action or criminal prosecution from a State court shall file in the district court  
19 of the United States for the district and division within which such action is pending  
20 a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil  
21 Procedure and containing a short and plain statement of the grounds for removal,  
22 together with a copy of all process, pleadings, and orders served upon such defendant  
23 or defendants in such action." As Applicant is not a defendant in the action he seeks  
24 to remove - or even a party - there is no basis for such removal.

25 For these reasons, defendant's IFP Request is DENIED.

26 IT IS ORDERED that (1) this matter be REMANDED to the Superior Court  
27 of California, Orange County, 700 Civic Center Drive West, Santa Ana, CA 92701,  
28 for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1446(a); (2) that the

1 Clerk send a certified copy of this Order to the state court; and (3) that the Clerk serve  
2 copies of this Order on the parties.

3 IT IS SO ORDERED.  
4  
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6 DATED: 10-16-14

*George H. King*  
7 GEORGE H. KING  
8 CHIEF UNITED STATES DISTRICT JUDGE

9 Presented by:

10 *David T. Bristow*  
11 \_\_\_\_\_

12 David T. Bristow  
13 United States Magistrate Judge  
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